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8 **IN THE UNITED STATES DISTRICT COURT**  
9 **FOR THE EASTERN DISTRICT OF CALIFORNIA**  
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11 LEE MAX BARNETT,

No. CIV S-99-2416-JAM-CMK

12 Petitioner,

DEATH PENALTY CASE

13 vs.

ORDER

14 ROBERT K. WONG, JR.,<sup>1</sup>

15 Respondent.  
16 \_\_\_\_\_/

17 Petitioner, a state prisoner proceeding with appointed counsel, seeks a writ of  
18 habeas corpus pursuant to 28 U.S.C. § 2254. The matter was referred to a United States  
19 Magistrate Judge pursuant to Eastern District of California local rules.

20 On March 22, 2007, the Magistrate Judge filed amended findings and  
21 recommendations (Doc. 217) herein which were served on the parties and which contained notice  
22 that the parties may file objections within a specified time. Timely objections to the findings and  
23 recommendations have been filed (Doc. 218).

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26 <sup>1</sup> Pursuant to Federal Rule of Civil Procedure 25(d), Robert K. Wong has been  
substituted for his predecessor.

1 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule  
2 304, this court has conducted a de novo review of this case. Having carefully reviewed the entire  
3 file, the court finds the findings and recommendations to be supported by the record and by  
4 proper analysis.

5 Petitioner generally reiterates the arguments raised in his motion, that the  
6 provisions of the Anti-Terrorism and Effective Death Penalty Act of 996 (“AEDPA”), do not  
7 apply. He objects to the findings and recommendations on the grounds that the Magistrate Judge  
8 erred in failing to address all of his arguments. The court finds those objections have no merit.  
9 Petitioner’s argument that 28 U.S.C. § 2254(d)(1) violates the Suspension Clause has been  
10 foreclosed by the Ninth Circuit’s opinion in Crater v. Galaza, 491 F.3d 1119, 1124-26 (9th Cir.  
11 2007) (rejecting such a challenge to AEDPA, concluding “that § 2254(d)(1) raises no Suspension  
12 Clause issue”). Petitioner’s challenge that AEDPA violates his First Amendment right to  
13 petition for redress of grievance, has been rejected by other district courts. See Perez v. Evans,  
14 2009 WL 2104853 (C.D. Cal. 2009) (statute of limitations), Martinez Cedello v. U.S., 2005 WL  
15 2620515 (D. Or. 2005) (time limitations); see also Lamkin v. Cockrell, 2003 WL 22244962  
16 (W.D. Tex. 2003) (finding that “AEDPA’s restrictions on successive applications fall within  
17 Congress and the courts’ traditional power to limit abuses of the writ”). This court agrees that  
18 while AEDPA does limit Petitioner’s abilities, it does not preclude Petitioner from seeking to  
19 redress his grievance through a habeas petition.

20 Finally, Petitioner’s argument that the § 2254(d) standard presumes a state court  
21 system with a level of independence and detachment comparable to that of the federal courts  
22 (generally an argument that the state court system lacks the level of independence and  
23 detachment the federal courts enjoy due to the election of state judges instead of the life time  
24 appointment enjoyed by federal judges) lacks merit and support. Petitioner argues that the  
25 political climate in California is such, due the pro-death stance of the politicians and their affect  
26 on the election/retention of state judges, that the courts are not independent. Therefore,

1 presumably, the California court's opinions should not be given the deference provided by §  
2 2254(d). Based on the current motion, the court declines to find that California's political  
3 environment, in general, interferes with the state court's independence to such an extent that the  
4 state court's opinions should not be given deference.

5 Accordingly, IT IS HEREBY ORDERED that:

6 1. The findings and recommendations filed March 22, 2007, are adopted in  
7 full; and

8 2. Petitioner's motion for a declaration that AEDPA does not apply in the  
9 instant action is denied.

10 DATED: February 18, 2010

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12 /s/ John A. Mendez  
13 UNITED STATES DISTRICT JUDGE  
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